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Supreme Court
FEB 12

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 758

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Appellant,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION.

MARTIN A. SCHENCK,
Counsel for Appellant.

DAVIES, AUERBACH & CORNELL,
Of Counsel.

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UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

against

INTERNATIONAL BUSINESS MACHINES CORPORATION ET AL.,

Defendants.

STATEMENT OF JURISDICTION.

Pursuant to Rule 12, Subdivision 1 of the Rules of the Supreme Court of the United States, defendant, International Business Machines Corporation, appellant herein, files this its statement showing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decree of the United States District Court for the Southern District of New York dated December 26, 1935, as follows:

1. The statute believed to sustain such appellate jurisdiction herein is the Act of February 11, 1903 known as "The Expediting Act", as amended by acts of June 25, 1910 and March 3, 1911, constituting Sections 28 and 29 of Title 15 of the United States Code, which provide as follows:

> "§ 28. *Suits against monopolies expedited.*—In any suit in equity brought in any district court of the United States under sections 1 to 7, inclusive, or section 15 of this chapter or any other statutory provisions having a

like purpose enacted after February 11, 1903, or that may be enacted wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending.

* * * * * * *

§ 29. *Appeals to Supreme Court.*—In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section wherein the United States is complainant, an appeal from the final decree of the district court, will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

2. The decree appealed from was entered in the United States District Court for the Southern District of New York on December 26, 1935.

3. The case arises on a petition filed by the United States of America, charging defendant with violation of the Act of Congress of October 15, 1914 (38 Stat. 730), known as the Clayton Act, constituting Section 15 of Title 15 of the United States Code, in relation to alleged "tying clauses" by which the lessees of tabulating machines owned by defendant-appellant are required to use, in connection with such tabulating machines, tabulating cards purchased from the lessor.

4. The final decree appealed from dated December 26, 1935, adjudges that such "tying clauses" are illegal and in violation of Section 3 of the Act of Congress approved October 15, 1914, known as the Clayton Act, and enjoins defendant-appellant, International Business Machines Corporation, from incorporating in any contract or lease of any tabulating machine, provisions requiring the use in connec-

tion therewith of tabulating cards manufactured or furnished by said defendant or making any adjustment of rental by reason of the use of such cards or of cards not manufactured or furnished by said defendant.

5. The cases believed to sustain the jurisdiction of the Supreme Court herein are as follows:

United Shoe Machinery Corporation v. *United States*, 258 U. S. 451;

Swift & Company v. *United States*, 276 U. S. 311;

United States v. *California Cooperative Canneries*, 279 U. S. 553.

Dated New York, N. Y., February 8, 1936.

Respectfully submitted,

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